

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Review of the 2003 Annual
Automatic Adjustment of Charges for All Gas
and Electric Utilities

ISSUE DATE: October 21, 2004

DOCKET NO. G,E-999/AA-03-1264

In the Matter of a Request by Aquila Networks-
PNG, an Operating Division of Aquila, Inc., for
Approval of its 2003 True-up Filing

DOCKET NO. G-011/AA-03-1380

DOCKET NO. G-007/AA-03-1379

In the Matter of a Request by Aquila Networks-
NMU, an Operating Division of Aquila, Inc.,
for Approval of its 2003 True-up Filing

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On August 29, 2003, Aquila Networks-PNG (PNG or Peoples-MN) and Aquila Networks-NMU (NMU), operating divisions of Aquila, Inc. (Aquila) submitted annual automatic adjustment reports (AAA Reports) and annual purchased gas adjustments (PGA) true-up filings covering the period from July 1, 2002 through June 30, 2003.

On February 27, 2004, the Department of Commerce (DOC) filed its Review of the 2003 AAA Reports. It recommended that the Commission accept PNG's and NMU's 2003 AAA Reports, and accept NMU's true-up filing. The DOC deferred making a recommendation on PNG's annual true-up filing.

On April 2, 2004, Aquila filed reply comments.

On May 5, 2004, the DOC filed its response indicating that it was seeking additional clarification of the capacity release and system balancing agreement (SBA) amounts in PNG's and NMU's true-ups and was requesting to withdraw its February 27, 2004 recommendation to accept NMU's true-up. The DOC recommended that the Commission delay any final decisions regarding PNG's and NMU's true-ups until the DOC filed its specific response to Aquila's natural gas AAA Report and PGA true-up issues.

On July 16, 2004, the DOC recommended that the Commission require that PNG and NMU include additional capacity release revenues of \$446,222 and \$71,287, respectively, in refunds to ratepayers unless Aquila could show that the capacity release revenues in the true-ups were

consistent with the actual cost of Aquila's TFX contracts for pipeline capacity on the Northern Natural Gas Company pipeline as reflected in Aquila's true-up filing. The DOC also recommended that the SBA credits for PNG and NMU be recalculated consistent with any change in the capacity release revenue.

On August 10, 2004, the Commission issued its ORDER ACTING ON GAS UTILITIES' 2003 ANNUAL AUTOMATIC ADJUSTMENT REPORTS AND SETTING FURTHER REQUIREMENTS, which required, among other things, that Aquila respond to the DOC's July 16, 2004 comments on or before August 13, 2004.

On August 13, 2004, Aquila filed reply comments requesting that the Commission accept Aquila's capacity release revenue allocations for PNG and NMU as originally filed. Aquila stated that the method it used to allocate capacity release revenues was reasonable and appropriate and that Aquila allocated the appropriate amount of TFX-related capacity release revenues to Minnesota.

On September 2, 2004, the DOC filed its response. The DOC continued to recommend that the capacity release revenues in the true-ups be consistent with the actual TFX-related pipeline capacity costs. For 2002-2003, the DOC recommended that Peoples-MN and NMU include additional capacity release revenues of \$446,222 and \$71,287, respectively, in the refund to ratepayers and that the refund amounts be increased to include SBA of \$27,600 for Peoples-MN and \$2,582 for NMU. As an alternative, the DOC suggested a methodology which would allocate the capacity release revenues based on the location of the release point on the Northern Natural Gas system.

On September 29, 2004, Aquila filed supplemental reply comments stating that there was no factual basis for the DOC's position and that the DOC's proposal would result in a penalty for the 2002-2003 true-up. Aquila requested a contested case hearing if the Commission could not approve Aquila's methodology.

This matter came before the Commission on October 7, 2004.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has general authority over these utilities under Minn. Stat. § 216B.03, 216B.08, and 216B.17. Specifically, the Commission has jurisdiction over regulated utilities' automatic adjustment of charges under Minn. Stat. § 216B.16, subd. 7 and Minnesota Rules part 7825.2390 through 7825.2920.

II. Referral for Contested Case Proceedings

The issue herein involves the release of pipeline capacity by Aquila during the 2002-2003 reporting year. There are material facts at issue relating to how these capacity costs and capacity release revenues should be recovered. For this reason the Commission will refer this matter to the Office of Administrative Hearings (OAH) for contested case proceedings.

III. Issue to be Addressed

The issue to be addressed is whether Aquila's proposed allocation of its revenue from the release of pipeline capacity on the Northern Natural Gas system during the 2002-2003 fiscal year was appropriately allocated to Minnesota ratepayers. The parties shall address this issue and any other relevant issues.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Kathleen D. Sheehy. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7602.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5010 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Robert Harding, Public Utilities Rate Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)296-7125; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with Commission staff and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Company, and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Monday, November 1, 2004 at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

V. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VI. *Ex Parte* Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this matter to the Office of Administrative Hearings for contested case proceedings, as set forth herein.
2. The contested case proceeding shall begin with a prehearing conference on Monday, November 1, 2004 at 9:30a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

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OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Kathleen D. Sheehy, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7602.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____